**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**
**WINSTON-SALEM DIVISION**

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| **THE UNITED STATES OF AMERICA, *ex. rel.* PEERLESS PRODUCTS, INC.,**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**CITIBUILDERS GROUP, LLC, F/K/A CITIBUILDERS SOLUTIONS GROUP, LLC, AND NORTH AMERICAN SPECIALTY INSURANCE COMPANY,**<br><br>**Defendants.** | **VERIFIED COMPLAINT** |

**NOW COMES** the Plaintiff, The United States of America, *ex. rel.* PEERLESS PRODUCTS, INC., ("Peerless Products" or the "Plaintiff"), complaining of the Defendants, CITIBUILDERS GROUP, LLC, f/k/a CITIBUILDERS SOLUTIONS GROUP, LLC ("Defendant Citibuilders") and NORTH AMERICAN SPECIALTY INSURANCE COMPANY ("Defendant North American") (Defendant Citibuilders and Defendant North American are collectively the "Defendants)(the Plaintiff and the Defendants are the "Parties" and each individually is a "Party"), and alleges as follows:

**THE PARTIES**

1. Plaintiff Peerless Products is a corporation organized and existing under the laws of the State of Missouri, and is prosecuting this action in the name of the United States of America, pursuant to 40 U.S.C. § 3133. The registered agent for Plaintiff Peerless Products is CT Corporation System, and service of process may be obtained at the registered address of 120 South Central Avenue in Clayton, Missouri, 63105.

2. Plaintiff Peerless Products is a leading supplier of specially-manufactured windows and doors to educational, healthcare, hospitality, commercial, industrial and government projects throughout the United States.

3. On information and belief, Defendant Citibuilders is a limited liability company, organized and existing under the laws of the Commonwealth of Virginia. The registered agent for Defendant Citibuilders is Neil Parekh, and service of process may be obtained at the registered address of 1111 North 19th Street, Suite 2001 in Arlington, Virginia, 22209.

4. On information and belief, Defendant Citibuilders provides general contracting services to educational, healthcare, hospitality, commercial, industrial and government projects throughout the United States.

5. On information and belief, Defendant North American is an insurance company authorized to provide surety and bonding services to federal construction projects within the State of North Carolina. Service of Process on Defendant North American may be obtained by pursuant to N.C. Gen. Stat. § 58-16-30 by service on the North Carolina Commissioner of Insurance at 1201 Mail Service Center in Raleigh, North Carolina 27699-1201.

## JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (2006) and pursuant to the Miller Act, 40 U.S.C. § 3133(b)(3)(B).

7. This Court also has supplemental jurisdiction over the common law claims alleged in the Complaint pursuant to 28 U.S.C. § 1367 (2006).

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (2006) because the contract giving rise to this claim executed and performed in Salisbury, which is located in the Middle District of North Carolina.

9. All conditions precedent necessary to bring this action have occurred, been satisfied or been waived. This action is brought within the applicable statute of repose and statutes of limitation.

## STATEMENT OF FACTS

10. On information and belief, Defendant Citibuilders contracted with the United States Department of Veterans Affairs (the "VA") for the construction of Building 3 and Building 4 (the "Project") at the W.G. (Bill) Hefner VA Medical Center, located generally at 1601 Brenner Avenue in Salisbury, North Carolina 28144.

11. On information and belief, on or about June 30th, 2014, Defendant Citibuilders contracted with Defendant North American to provide a payment bond for the Project in the amount of two million, one hundred forty-four thousand dollars and zero cents ($2,144,000.00). A genuine and authentic copy of this Payment Bond is attached as Exhibit 1 to this Verified Complaint and incorporated herein by reference.

12. On or about August 15th, 2014, Defendant Citibuilders entered into a Credit Application with Plaintiff Peerless Products for the manufacture and supply of windows for use at the Project. A genuine and authentic copy of this Credit Application is attached as Exhibit 2 to this Verified Complaint and incorporated herein by reference.

13. Pursuant to the terms of the Credit Application, Defendant Citibuilders agreed to pay the amounts invoiced by Peerless Products for materials ordered by Defendant Citibuilders within thirty (30) days of the invoice date.

14. Pursuant further to the terms of that Credit Application, Defendant Citibuilders also agreed to pay interest that the rate of eighteen percent (18.00%) per year/one and one-half percent (1.50%) per month on any balance past-due by more than thirty (30) days and any legal costs necessary to collect any outstanding balance.

15. On or about July 10th, 2014, Plaintiff Peerless Products provided Defendant Citibuilders with a proposal for specially-manufactured windows for use in Building 3 in the total amount of four hundred eighty-seven thousand, five hundred ninety-eight dollars and zero cents ($487,598.00). A genuine and authentic copy of the proposal for Building 3 is attached as Exhibit 3 to this Verified Complaint and incorporated herein by reference.

16. On or about September 3rd, 2014, Plaintiff Peerless Products provided Defendant Citibuilders with a proposal for specially-manufactured windows for use in Building 4 in the total amount of five hundred fourteen thousand, eight hundred ninety-nine dollars and zero cents ($514,899.00). A genuine and authentic copy of the proposal for Building 4 is attached as Exhibit 4 to this Verified Complaint and incorporated herein by reference.

17. On or about July 13th, 2015, Defendant Citibuilders authorized Plaintiff Peerless Products to begin production of specially-manufactured windows for use in Building 4 at the cost of five hundred fourteen thousand, eight hundred ninety-nine dollars and zero cents ($514,899.00). A genuine and authentic copy of the Job Information/Order Form, executed by Defendant Citibuilders for Building 4 is attached as Exhibit 5 to this Verified Complaint and incorporated herein by reference.

18. On or about September 8th, 2015, Defendant Citibuilders authorized Plaintiff Peerless Products to begin production of specially-manufactured windows for Building 3 at the cost of four hundred eighty-seven thousand, five hundred ninety-eight dollars and zero

cents ($487,598.00). A genuine and authentic copy of the Job Information/Order Form, executed by Defendant Citibuilders for Building 3 is attached as Exhibit 6 to this Verified Complaint and incorporated herein by reference.

19. Between on or about July 13th, 2015 and on or about April 1, 2016, Plaintiff Peerless Products manufactured windows at the direction of Defendant Citibuilders and delivered them to the Project for use in Building 3 and Building 4. A genuine and authentic copy of Plaintiff Peerless Products' statement of Defendant Citibuilders' account is attached as Exhibit 7 to this Verified Complaint and incorporated herein by reference. Genuine and authentic copies of Plaintiff Peerless Products' unpaid invoices to Defendant Citibuilders are attached as Exhibit 8 to this Verified Complaint and incorporated herein by reference. A genuine and authentic copy of Plaintiff Peerless Products' Bill of Lading to Defendant Citibuilders, proving delivery of the windows to the Project, acknowledged by Defendant Citibuilders, is attached as Exhibit 9 to this Verified Complaint and incorporated herein by reference.

## FIRST CAUSE OF ACTION AS TO DEFENDANT CITIBUILDERS: BREACH OF CONTRACT

20. Plaintiff Peerless Products realleges the allegations contained in Paragraphs 1-19 of this Verified Complaint in this First Cause of Action.

21. Despite receiving the specially-made windows and despite receiving numerous demands for payment, Defendant Citibuilders has refused or otherwise failed to make payment to Plaintiff Peerless Products.

22. Defendant Citibuilders raised no concern as to the quantity or quality of the materials provided by Plaintiff Peerless Products.

23. The VA raised no concern as to the quantity or quality of the materials provided by Plaintiff Peerless Products.

24. As of the date of this Verified Complaint, Defendant Citibuilders still owes Plaintiff Peerless Products the total principal balance of two hundred forty-two thousand, three hundred fifty-seven dollars and twenty cents ($242,357.20), plus interest in the amount of thirty-eighty thousand, one hundred seven dollars and forty cents ($38,107.40), plus interest accruing in the amount of one hundred nineteen dollars and fifty-one cents ($119.51) per day.

25. Notice is hereby given, pursuant to N.C. Gen. Stat. § 6-21.2, that Plaintiff Peerless Products' shall seek the recovery of attorneys' fees unless the outstanding balance is paid within five (5) days of the date of service of this Verified Complaint.

## SECOND CAUSE OF ACTION AS TO DEFENDANT CITIBUILDERS: UNJUST ENRICHMENT

26. Plaintiff Peerless Products realleges the allegations contained in Paragraphs 1-25 of this Verified Complaint in this Second Cause of Action.

27. In the alternative, Plaintiff Peerless Products provided valuable specially-manufactured windows to Defendant Citibuilders for which Plaintiff Peerless Products has not been compensated.

28. Defendant Citibuilders benefitted from the specially-manufactured windows provided by Plaintiff Peerless Products in that it has been paid, at least in part, by the VA for work it performed on the Project.

29. Defendant Citibuilders knew or should have known that Plaintiff Peerless Products was not providing these specially-manufactured windows gratuitously.

30. The fair market value of the specially-manufactured windows provided by Plaintiff Peerless Products to Defendant Citibuilders is at least the principal amount of two hundred forty-two thousand, three hundred fifty-seven dollars and twenty cents ($242,357.20), plus interest calculated up to the date of this Verified Complaint in the amount of thirty-eighty thousand, one hundred seven dollars and forty cents ($38,107.40), plus interest accruing in the amount of one hundred nineteen dollars and fifty-one cents ($119.51) per day.

**THIRD CAUSE OF ACTION AS TO ALL DEFENDANTS: ENFORCEMENT OF THE PAYMENT BOND**

31. Plaintiff Peerless Products realleges the allegations contained in Paragraphs 1-30 of this Verified Complaint in this Third Cause of Action.

32. As described above, Plaintiff Peerless Products was a subcontractor pursuant to 40 U.S.C. § 3130 (the "Miller Act").

33. Pursuant to the Miller Act and the terms of the Payment Bond, on or about April 29th, 2016, Plaintiff Peerless Products properly served a claim for payment on Defendant Citibuilders and Defendant North American. A genuine and authentic copy of Plaintiff Peerless Products' claim for payment under the Payment Bond for Building 3 is attached as Exhibit 10 to this Verified Complaint and incorporated herein by reference. A genuine and authentic copy of Plaintiff Peerless Products' claim for payment under the Payment Bond for Building 4 is attached as Exhibit 11 to this Verified Complaint and incorporated herein by reference.

34. Pursuant further to the Miller Act and the terms of the Payment Bond, on or about January 24th, 2017, Plaintiff Peerless Products submitted a complete and accurate Proof of Claim to Defendant North American. A genuine and authentic copy of this Proof of

Claim is attached as Exhibit 12 to this Verified Complaint and incorporated herein by reference.

35. Despite receipt of its claims under the Payment Bond, Defendant Citibuilders and Defendant North American have failed or refused to compensate Plaintiff Peerless Products for the specially-manufactured windows it provided to the Project.

36. Plaintiff Peerless Products is therefore still owed the principal balance of two hundred forty-two thousand, three hundred fifty-seven dollars and twenty cents ($242,357.20), plus interest, calculated up to the date of this Verified Complaint in the amount of thirty-eighty thousand, one hundred seven dollars and forty cents ($38,107.40), plus interest accruing in the amount of one hundred nineteen dollars and fifty-one cents ($119.51) per day.

37. This action is properly brought within one (1) year of the date that the Plaintiff last furnished materials to the Project, pursuant to 40 U.S.C. § 3133.

**WHEREFORE THE PLAINTIFF** respectfully prays this Court for the following relief:

1. That the Plaintiff have and recover of Defendant Citibuilders, jointly a severally, a judgment in the principal amount of two hundred forty-two thousand, three hundred fifty-seven dollars and twenty cents ($242,357.20), plus interest calculated up to the date of this Verified Complaint in the amount of thirty-eighty thousand, one hundred seven dollars and forty cents ($38,107.40), plus interest accruing in the amount of one hundred nineteen dollars and fifty-one cents ($119.51) per day;

2. That the Plaintiff have and recover of Defendant North American, jointly a severally, a judgment in the principal amount of two hundred forty-two thousand,

three hundred fifty-seven dollars and twenty cents ($242,357.20), plus interest calculated up to the date of this Verified Complaint in the amount of thirty-eighty thousand, one hundred seven dollars and forty cents ($38,107.40), plus interest accruing in the amount of one hundred nineteen dollars and fifty-one cents ($119.51) per day;

3. That the Plaintiff have and recover its attorneys' fees pursuant to 40 U.S.C. § 3130 and N.C. Gen. Stat. § 6-21.2(1);

4. That the Court grant such other and further relief to the Plaintiff as the Court deems just and proper.

This, the 28th day of March, 2017.

*_/s/ Richard L. Robertson_*
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I, Abby Morrell being first duly sworn, deposes and says:

I am the Accounting Manager for PEERLESS PRODUCTS, INC., the Plaintiff in the foregoing action, that I have read the foregoing Verified Complaint and know the contents thereof, and the same are true of my own knowledge, except as to those matters and things contained therein stated upon information and belief, and as to those matters and things, I believe them to be true.

PEERLESS PRODUCTS, INC.,

[signature]
By: Abby Morrell

SWORN TO and subscribed before me this,
the 24th day of March, 2017.
[signature: Patricia A. Rogers]
Notary Public

My Commission Expires: 6-27-2020

NOTARY PUBLIC STATE OF KANSAS
PATRICIA A. ROGERS
My Appt. Exp. 6-27-2020